

No. **2022-7533**

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 9/30/2022

Subject Considered:

Indemnity Insurance Company of North America
115 Wild Basin Road, Suite 207
West Lake Hills, Texas 78746-3347

Consent Order

DWC Enforcement File Nos. 29553, 29594, 29598, 29654, 29661, and 29688

General remarks and official action taken:

This is a consent order with Indemnity Insurance Company of North America (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

Findings of Fact

1. Respondent holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to Tex. Ins. Code §§ 801.051-801.053 and is licensed to write workers' compensation/employers' liability insurance in Texas.

2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate Payment of Temporary Income Benefits

Enforcement File No. 29553

3. On [REDACTED] Respondent received notice of an injury to an employee.
4. The first day of disability for the injured employee began on [REDACTED] and the-eighth day of disability accrued on [REDACTED]
5. Respondent was required to initiate or dispute temporary income benefits (TIBs) the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
6. Respondent paid the initial TIBs payment 46 days late on [REDACTED]

Enforcement File No. 29598

7. On [REDACTED] Respondent received notice of an injury to an employee.
8. The first day of disability for the injured employee began on [REDACTED] and the eighth day of disability accrued on [REDACTED]
9. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
10. Respondent paid the initial TIBs payment 10 days late on [REDACTED]
11. Respondent did not pay interest for the late payment.
12. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED] Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED] Respondent paid TIBs 10 days late on [REDACTED]

13. Respondent did not pay interest for the late payment.

Failure to Timely Pay Accrued Temporary Income Benefits

Enforcement File No. 29594

14. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	24
2.	[REDACTED]	[REDACTED]	[REDACTED]	17
3.	[REDACTED]	[REDACTED]	[REDACTED]	10
4.	[REDACTED]	[REDACTED]	[REDACTED]	3

15. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent paid TIBs nine days late on [REDACTED].

16. Respondent did not pay interest for the late payment.

17. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent paid TIBs two days late on [REDACTED].

18. Respondent did not pay interest for the late payment.

Enforcement File No. 29654

19. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent made a partial payment on [REDACTED] which was six days late. Respondent paid the remaining amount 43 days late on [REDACTED].

20. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	36
2.	[REDACTED]	[REDACTED]	[REDACTED]	29
3.	[REDACTED]	[REDACTED]	[REDACTED]	22
4.	[REDACTED]	[REDACTED]	[REDACTED]	15
5.	[REDACTED]	[REDACTED]	[REDACTED]	8

21. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED], through [REDACTED]. Respondent made a partial payment on [REDACTED] which was one day late. Respondent paid the remaining amount on [REDACTED], which was 29 days late.

22. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	22
2.	[REDACTED]	[REDACTED]	[REDACTED]	15
3.	[REDACTED]	[REDACTED]	[REDACTED]	8

Enforcement File No. 29688

23. Respondent was required to pay TIBs to an injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	58
2.	[REDACTED]	[REDACTED]	[REDACTED]	51
3.	[REDACTED]	[REDACTED]	[REDACTED]	44
4.	[REDACTED]	[REDACTED]	[REDACTED]	37
5.	[REDACTED]	[REDACTED]	[REDACTED]	30

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 Texas Labor Code §§402.083 and 402.092

6.	████████████████████	██████████	██████████	23
7.	████████████████████	██████████	██████████	16
8.	████████████████████	██████████	██████████	9
9.	████████████████████	██████████	██████████	2

Failure to Failure to Timely Pay Attorney Fees Ordered by DWC

Enforcement File No. 29661

24. ██████████ DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
25. Between ██████████ and ██████████ Respondent issued multiple payments to the injured employee for unpaid income benefits. Respondent failed to timely pay attorney fees in an amount equal to 25 percent of the income benefits paid to the injured employee as follows:

	Benefits Paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
1.	██████████	██████████	██████████	██████████	23
2.	██████████	██████████	██████████	██████████	17
3.	██████████	██████████	██████████	██████████	9
4.	██████████	██████████	██████████	██████████	2

Assessment of Sanction

1. Failure to provide income benefits and interest in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.

<p>Confidential Information Redacted Texas Labor Code §§402.083 and 402.092</p>
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3. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.

4. In assessing the sanction for this case, DWC fully considered the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e):
 - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:
 - PBO assessments;
 - prompt and earnest actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including, but not limited to the size of the company or practice and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

6. DWC found the following factor in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
7. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that the proposed sanction is appropriate, including the factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
8. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, 414.003, and 415.021.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to Tex. Lab. Code § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. Pursuant to Tex. Lab. Code § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.

Failure to Timely Initiate Payment of Temporary Income Benefits

7. Pursuant to Tex. Lab. Code § 409.021(e) and 28 Tex. Admin. Code § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits or act within 15 days after it receives written notice of the injury.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 each time it failed to timely initiate payment of TIBs.

Failure to Timely Pay Accrued Temporary Income Benefits

9. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
10. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
11. Respondent violated Tex. Lab. Code §§ 409.021 and 415.002(a)(16), (20), and (22) each time Respondent failed to timely initiate payment of accrued TIBs.

Failure to Timely Pay Interest

12. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
13. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) each time Respondent failed to pay interest with accrued but unpaid income benefits.


Failure to Timely Pay Attorney Fees Ordered by DWC

14. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.

15. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
16. Respondent violated Tex. Lab. Code §§ 415.002(a)(20), 415.021(a), 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.


Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$58,500 within 30 days from the date of this order. Indemnity Insurance Company of North America must pay the administrative penalty by company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
Indemnity Insurance Company of North America
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Unsworn Declaration

STATE OF Delaware §
§
COUNTY OF New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel S. Hawthorne. I hold the position of North American Compliance Manager and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

1 Beaver Valley Road, Wilmington, New Castle DE, 19803.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.



Declarant

Executed on September 20, 2022.

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Texas Labor Code §§402.083 and 402.092